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ROSENBAUM HARDWARE CO. *v.* PAXTON LUMBER CO.

Jan. 16, 1919.

[97 S. E. 784.]

1. Sales (§ 58*)—Construction—Statements on Invoices.—Printed statements upon invoices and letter heads of a seller do not, in the absence of some specific reference thereto, qualify an absolute contract of sale arising from an offer and acceptance thereof contained in the letter.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 10.]

2. Sales (§ 168 (2)*)—Acceptance—Inspection.—A purchaser of lumber in carload lots has the right to rely upon the obligation resting on the seller under his contract to ship the commodity of the character and quality specified, and is entitled to a reasonable time in which to unload the car and make inspection or examination before he is required to accept.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 11.]

3. Appeal and Error (§ 1064 (1)*)—Review—Harmless Error.—In action for price of a car of lumber which the buyer claimed was not up to the specifications, an instruction that it was the duty of buyer to have the lumber inspected immediately upon its arrival held prejudicially erroneous in the use of the word "immediately," for the buyer had a reasonable time within which to inspect.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 38, 79.]

4. Trial (§ 252 (13)*)—Instructions—Evidence.—In an action for price of a car of lumber which defendant transshipped to a customer without unloading or inspection, held, that an instruction that, if defendant accepted the car of lumber and tendered it to its customer, the jury should find for plaintiff, was erroneous; there being no evidence that car was accepted.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 37.]

5. Appeal and Error (§ 1033 (5)*)—Review—Harmless Error.—In an action for the price of lumber, an instruction, while not clear, held harmless to defendant, as it supported defendant's theory.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 563-4.]

6. Trial (§ 253 (10)*)—Instructions—Ignoring Facts.—In an action for the purchase price of lumber sold, an instruction that defendant did not accept the lumber under certain circumstances held properly refused because ignoring all other controverted facts in the case.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 714-6.]

7. Trial (§§ 191 (3), 253 (10)*)—Instructions—Assumption as to Facts—Ignoring Evidence.—In an action for price of lumber, an instruction that, if defendant delivered the lumber to its customer

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

without inspecting it, that constituted acceptance, and verdict should be for plaintiff, unless plaintiff, with knowledge, instructed defendant to dispose of the lumber to its account, held erroneous as assuming that defendant delivered lumber to its vendee and because ignoring the contract specifications.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 718.]

8. Sales (§ 181 (1)*)—Burden of Proof.—While a seller of lumber which had waived its right to insist on the buyer's acceptance may retract the waiver where it was made in ignorance of all the facts and may recover upon proof that the lumber was substantially of the character specified, yet the seller has the burden of showing that the lumber was of the character specified, and the mere failure of buyer to have the same inspected will not relieve it of that burden.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 17.]

Appeal from Corporation Court of Newport News.

Action by the Paxton Lumber Company against the Rosenbaum Hardware Company. There was a judgment for plaintiff, and defendant appeals. Reversed, and remanded for new trial.

Wm. A. Graff, of Norfolk, and *J. Winston Read*, of Newport News, for plaintiff in error.

Baird & Swink, of Norfolk, for defendant in error.

SWIFT & CO., Inc. v. HATTON.

Jan. 16, 1919.

[97 S. E. 788.]

1. Master and Servant (§ 103 (1)*)—Safe Place of Work—Nature of Duty.—A master is under an absolute obligation, that is, charged with a nonassignable duty to use due care in providing and maintaining a reasonably safe place for his servants to work.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 669.]

2. Master and Servant (§ 164*)—Safe Place of Work—Duty of Master—Supervision.—Although instrumentalities are in themselves safe if properly placed and used, yet, as delinquencies of coservants may render the place of work unsafe, it is the unassignable duty of the master to exercise reasonable care by supervision to keep himself informed as to the manner in which the duties intrusted to the coservants are performed.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 669, 683.]

3. Master and Servant (§ 164*)—Safe Place of Work—Duty of Master—Supervision.—A master is not bound to supervise the merely

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